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MANDATORY INCOME WITHHOLDING IMPLEMENTATION MONOGRAPH

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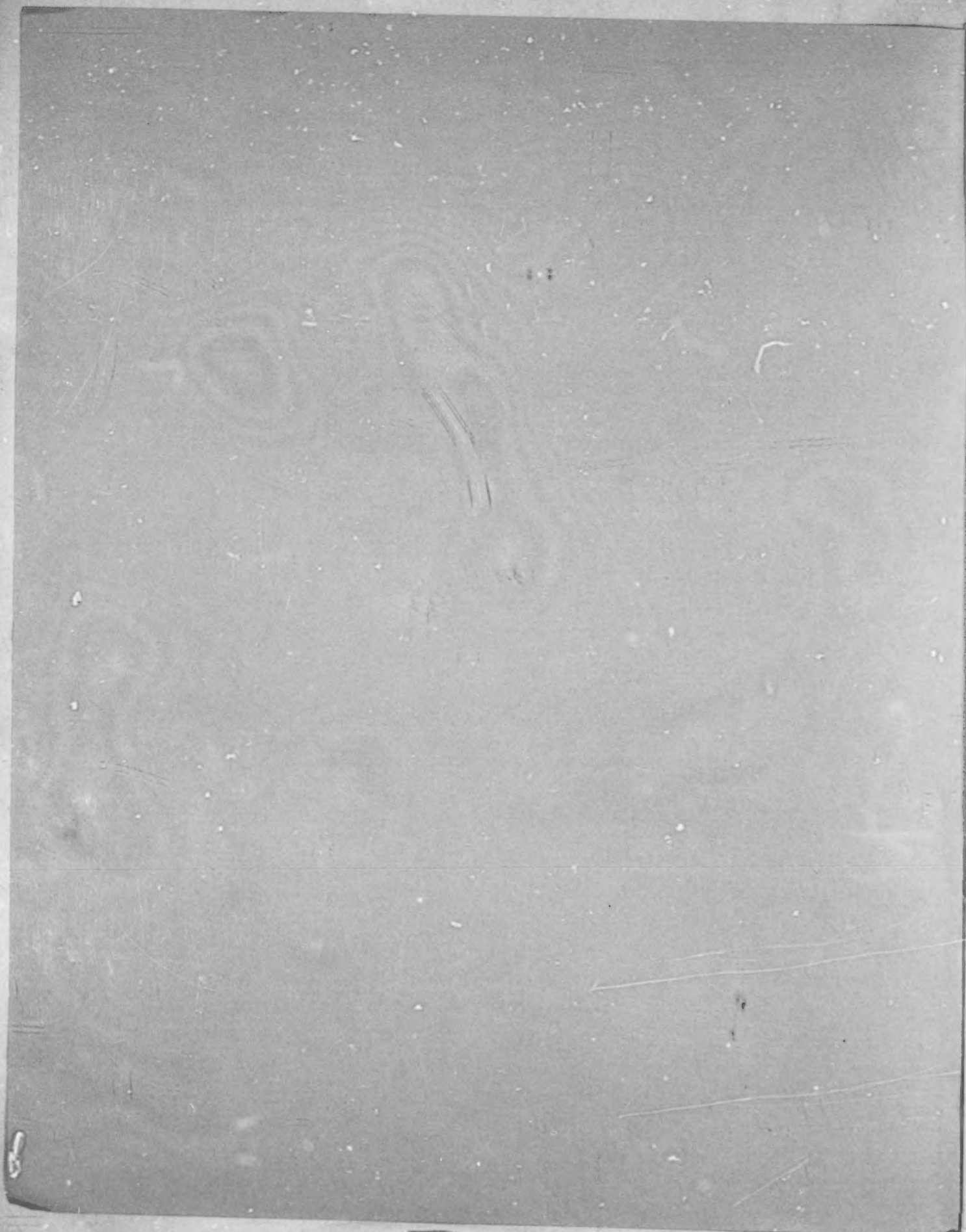

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This monograph is for informational purposes only. It is not an endorsement of the views of any one member of the Advisory Panel, nor does it represent official policy of the Office of Child Support Enforcement or that of the Department of Health and Human Services. Where Federal requirements are noted, they are based upon Federal legislation (PL 98-378) or implementing regulations. For the most part, this document represents a compilation of effective income withholding practices and provides examples and results taken from projects which are fully operational within the Child Support Enforcement program.

Chapter I

INTRODUCTION

In 1974 Congress enacted title IV-D of the Social Security Act effective July, 1975. This title created a Federal-State scheme for the establishment and enforcement of child support, under the auspices of the Federal Office of Child Support Enforcement. States were required to establish child support enforcement plans administered by State IV-D agencies and partially funded by the Federal Government. The costs to the Aid to Families with Dependent Children (AFDC) program, resulting from absent parents' failure to support their children, had become staggering.

Title IV-D required States to establish child support enforcement programs which would use existing State laws and procedures to establish paternity and to establish and enforce support obligations on behalf of minor children. Services were to be made available both to families receiving AFDC benefits and to others who asked for assistance.

While improvements in child support collection in the decade since this Act have been significant, Census Bureau surveys continue to report that some 40 percent of families theoretically entitled to support orders do not have them, and that overall noncompliance with support orders is still at epidemic proportions.

As a result, Congress reconsidered the basic premises of the program, and 10 years after original passage of title IV-D of the Social Security Act, passed the Child Support Enforcement Amendments of 1984, Public Law 98-378. These amendments build on the original law by adding mandatory collection mechanisms. States must enact a number of specific remedies and procedures to improve their child support enforcement programs. The Federal law also seeks to equalize the treatment of collection efforts on behalf of AFDC and non-AFDC families. New State laws and procedures should not only enhance the support collections practices of public agencies, but also provide private practitioners with important new support collection tools in many states.

Improvements in child support recovery since the original Federal/State system was created in 1975 are evident. Collections reached a record $2 billion in fiscal 1983. However, State program performance is uneven, and consequently many absent parents are still evading their lawful obligations.

At the heart of Public Law 98-378 are a number of mandatory procedures which States must implement to improve the collection of support. In general, these procedures are based on successful support enforcement practices already employed in some States. Where Congress had previously allowed States to provide support enforcement services under the IV-D program using existing State substantive law and procedures, Public Law 98-378 directs States to change their substantive family law to provide a specific set of enforcement remedies. In part, this decision was based on striking differences in the collection success rates of States that use the most effective enforcement methods and those that do not.

Mandatory procedures in Public Law 98-378 must be used to enforce the support obligations owed to clients of the IV-D agency — whether AFDC recipients or not. Public Law 98-378 does not state that these remedies must be made available in all child support enforcement actions in the State. The key mandated procedure is a requirement that States establish a system under which court or agency-ordered support payments will be withheld from the wages or other income of obligors who are delinquent in making payments.

Mandatory automatic income withholding under the new Federal law is an enforcement technique which requires the court or administrative agency to order an employer to withhold and transmit part of an obligor's income to an agency designated by the State. For cases being enforced by the IV-D agency, income withholding must be triggered automatically without a return to court whenever an arrearage accrues equal to 1-month's support. Further, States must provide that all new or modified orders include a provision for income withholding when a specified arrearage occurs. (This provision applies to non-IV-D orders as well as those enforced under Title IV-D.)

Benefits

Some of the benefits that State and local child support programs will realize from using mandatory automatic income withholding include:

- The withholding agency receives payments on a regular basis. Additionally, because the withholding process starts after a delinquency of no more than 1-month's worth of support, an employed obligor does not have the opportunity to amass a large arrearage.

- o Regularity of payments reduces time spent in court pursuing other more cumbersome enforcement methods. Further, because income withholding provides a record of payments, less time will be spent in court on payment disputes.

- o Monitoring of child support accounts to determine when delinquency occurs will necessarily continue. However, once that delinquency is met, enforcement action proceeds quickly and automatically.

The obligor also benefits from income withholding in that:

- o The employer deducts the money from the obligor's paycheck before the obligor receives it. The obligor, therefore, never has possession of the money being paid for child support and is less likely to miss it.
- o The employer has the responsiblity of remembering to make the child support payments rather than the obligor.
- o Disruption to the obligor's second family is minimized. Often, it's the second wife who writes the checks for child support payments. With income withholding she is relieved of that responsibility.
- o Avoids contempt, garnishment, other more disruptive collection remedies.

The employer will also benefit from this technique in that:

- o Income withholding helps to constrain the cost of government and attendant taxes by placing the responsibility for the financial support of children with the parents, not with corporate or individual taxpayers.

- o Income withholding can eliminate or reduce the emotional distress employed custodial parents experience with missed payments, thus enabling them to be more productive on the job.
- o Because payments are made regularly, the amount of time employees must be absent from the job for court appearances in support disputes will be reduced.

Purpose: What This Monograph is Designed To Do

The Federal Office of Child Support Enforcement has developed this Mandatory Income Withholding Implementation Monograph to assist States/counties in implementing the enforcement technique after the required State legislation is passed.

The information provided in this monograph has been compiled after studying actual State and county procedures for income withholding, and was produced with input from State and county personnel.

The monograph covers four topics: Chapter II, Overview Description of Mandatory Income Withholding, describes and defines mandatory income withholding; Chapter III, Essential Requirements for Implementation, identifies some of the factors which provide a foundation for successful implementation of the technique, and establishes the step-by-step procedures for implementing mandatory income withholding, from planning and reviewing options to actual implementation; Chapter IV, Problems to Anticipate, covers problems that may inhibit successful implementation; and, to assist in establishing accountability during the implementation of mandatory income withholding, Chapter V, Assessment of

Implementation, details specific steps for conducting an assessment of the implementation.

Audience: Who the Monograph is Designed For

The monograph is designed primarily to inform State and local IV-D staff. Specifically, the three special audiences most likely to use the monograph as a management and implementation tool are:

- State and local managers and supervisors who establish policy, plan and organize, and coordinate implementation and whose staff write procedural manuals.

- Child support enforcement practitioners who develop and implement procedures.

- Other interested persons such as judges, paralegals, attorneys, clerks of the court, and umbrella agency personnel.

Delays in Implementation

Federal Regulations (45 CFR 302.70(a)(1)) require that a State's existing IV-D caseload have an income withholding provision implemented by October 1, 1985. Further, new support orders established after September 30, 1985, must have a specific provision for withholding. However, under PL 38-378, if the Secretary determines that legislation is required to conform the State IV-D plan to comply with the requirements of the income withholding provision, the IV-D State plan will

not be regarded as failing to comply with that provision of the law prior to the beginning of the fourth month beginning after the end of the first regular, special, budget or other session of the State's legislature which ends on or after October 1, 1985.

Exemptions

Public Law 98-378 allows the Secretary of the Department of Health and Human Services to grant a State an exemption from enacting and using mandatory automatic income withholding if the State, in its exemption request, demonstrates that the procedure would not increase the effectiveness and efficiency of the State's child support enforcement program. This demonstration must be supported by data pertaining to caseloads, processing time, collections and any other actual or estimated data the Secretary may require. (45 CFR 302.70(d)).

Chapter II

OVERVIEW DESCRIPTION OF MANDATORY INCOME WITHHOLDING

This chapter of the monograph briefly describes the requirements of Public Law 98-378 and Federal regulations. It defines mandatory automatic income withholding, discusses different types of withholding laws, and defines the term "withholding agency." Subsequent chapters address basic requirements for implementation.

Basic Concept of Income Withholding

The terms "wage assignment," "wage withholding," "income assignment," "income withholding" and "earnings assignment" have been used in the past in State statutes interchangeably and with varying meanings. All involved the act of withholding money from an employee or beneficiary of other source of income by a specified entity and paying the money withheld directly, or through a third party, to a designated State agency (hereafter referred to as the withholding agency). For purposes of this monograph the term income withholding will be used.

The Withholding Agency

The withholding agency is that publicly accountable agency which the State designates to administer income withholding in accordance with procedures specified by the State for keeping adequate records to document, track, and monitor support payments. This publicly accountable agency can be a public agency or a private agency under contract with the State to act as the income withholding agency. (45 CFR 303.100(e)(1)).

The State may consider contracting for income withholding with a private agency as a way to meet the requirements of Public Law 98-378. State agencies may consider the following kinds of private entities: accounting firms, banks, and payroll firms. Any of these may be suitable, based on an analysis of the type and quality of service the particular firms can provide. Generally, accounting firms utilize bookkeeping methods to produce financial statements concerning assets and liabilities; banks receive, safeguard, and lend money; and payroll firms are responsible for paying employees' wages and consequently maintain records of wage information.

A purchase of service agreement is the appropriate contracting device if the agency is a private concern. If the income withholding agency is outside the department in which the IV-D agency is located, a cooperative agreement should be used. The agreement should specify the contractor's duties, the public agency's duties, performance standards, cost reporting requirements and payment amounts, monitoring provisions, remedies for breach of contract terms including penalties as appropriate, provisions for termination, EEO compliance, access by both the grantee and the Federal government to records for audit purposes, and information safeguarding provisions.

Types of Withholding Practiced by States Prior to Public Law 98-378

Income withholding laws in effect in various States prior to PL 98-378 fell into four categories:[1]

1. **Mandatory income withholding as an integral part of every support order, established at the time that each support order was entered.** The order

went into effect immediately or at the time a statutorily specified arrearage occurred. The support payments were then paid out of the obligor's income pursuant to the income withholding order. If the income withholding did not take effect immediately, the obligor could either: (1) contest the action, e.g., Did the default actually occur? Are the IV-D agency's payment records accurate? Can legal exemptions be claimed?; or, (2) pay his or her delinquency.

2. **Mandatory income withholding ordered by the court upon proof that an arrearage existed.** This income withholding order was a legally enforceable order which required an employer to pay a part of an obligor's wages to the obligee/IV-D agency. The order went directly to the employer; the employee, or obligor, did not have to sign an assignment agreement. Some State statutes that referred to "wage assignments," actually operated as income withholding provisions. An income withholding statute was considered "mandatory" when there was no judicial discretion in deciding whether such an order should be entered.

   Before the enactment of Public Law 98-378, income withholding was mandatory when State statutes stipulated the conditions under which the court or withholding agency were required to impose withholding. The order could take effect immediately or upon a specified default in payments. Historically, however, the laws in most States did not make income withholding mandatory. The following paragraphs describe the types of withholding laws some States had adopted.

3. **Discretionary** income withholding orders allowed the court the option of imposing the order after individual consideration of the circumstances. In the past, more States had discretionary income withholding statutes than any other type of withholding statute.

   Discretionary income (or wage) assignments, while similar in effect to mandatory orders, differed from withholding orders in that they were directed to the employee (or obligor), not the employer. The court order required an obligor to assign a portion of his or her earnings toward child support. The employer then paid the obligor's support payments out of the obligor's wages.

4. **Voluntary** income withholding orders required the obligor to agree to have a portion of his or her wages withheld and transmitted to an obligee/IV-D agency. To initiate a voluntary wage withholding order, the absent parent completed an authorization requesting that the employer withhold and transmit a certain amount of money from his or her wages. These stipulated agreements could be used for the child support enforcement agency's existing caseload. By processing the agreement through the court and obtaining a judge's signature, the agreement became a court order. The employer then had to comply with the wage withholding order. An employer who did not comply could be found in contempt. In addition, these withholding orders started immediately upon the obligor's request.

Public Law 98-378 requires changes in these procedures by requiring States to include a provision for automatic mandatory income withholding in every new and modified order for child support. Every existing case being enforced by the State

IV-D agency must be enforced by income withholding when the required 1 month deliquency equalling 1 month's support occurs, or earlier at the discretion of the State.

How Income Withholding Works

The following is an overview of the practice of mandatory automatic income withholding.

A general series of events begin when a child support order is obtained. The order contains a built-in provision for income withholding when the obligor fails to pay so that a set minimum arrearage accumulates (equal to 1 month's support or a lesser amount at the option of the State). The withholding agency monitors the case until such time as a delinquency sufficient to trigger the income withholding mechanism accrues. The withholding agency effectuates the order by first notifying the obligor of the intent, holding any hearings requested by the obligor on matters of fact, and then notifying the employer to withhold a portion of the obligor's wages. (States which had withholding systems in effect on August 16, 1984 with procedures which met the procedural due process requirements of State law are not bound by the prior notice requirement to the absent parent. The State may begin the wage withholding process by sending the notice directly to the employer.) The withholding agency then monitors payments from the employer to ensure that it is complying with the withholding order. The income withholding order remains in effect until terminated by the withholding agency.

Exceptions to the above pattern exist. Should the obligor become unemployed, the order must necessarily become inoperative for that period of time. (The State

IV-D agency must then give attention to the interception of unemployment compensation). Obviously, should the obligor be disabled and unemployable, working for in-kind benefits, or otherwise not receiving wages, service of an income withholding order may be futile. However, a disabled and unemployed obligor may be receiving some sort of disability benefits. The State IV-D agency should explore the possibility of withholding other income, if State law permits.

At first glance, self-employed obligors' wages may appear impossible to obtain by using mandatory income withholding. However, some jurisdictions have had success in utilizing the technique when the obligor is working under contract. In such cases, the withholding agency should serve the prime contractor with the income withholding order. If an obligor's business is incorporated, the withholding agency should try to serve the corporation.

The income withholding agency must work with the employer to ensure the transmittal of payments. The current employer and successor employers are bound to honor an income withholding order. The obligation begins upon proper notice according to statutory requirements of service. The withholding agency should address specific aspects of its relationship with the employer such as: multiple obligors, correlation of payment cycle and order, the refusal to comply and discharge of employees, the employer's liability, and the method of payment transmittal to ensure that the employer understands how to fulfill it's responsibilities.

Requirements of Public Law 98-378

Each State's mandatory automatic income withholding statute and procedures must address the following provisions:

- **The withholding must apply to both current and past-due support.**

- **The withholding must be paid through the publicly accountable agency (the withholding agency).**

- **The State law must apply to both the State's existing IV-D caseload and all new support orders. For example, State law could provide that it is sufficient to serve notice on individuals with existing support orders that the accumulation of an arrearage equal to 1 month of their support obligation would cause action to implement withholding in accordance with the State statute. Federal Regulations (45 CFR 302.70(a)(1)) require that a State's existing IV-D caseload have an income withholding provision implemented by October 1, 1985. New support orders established after September 30, 1985, must have a specific provision for withholding or may be dealt with by blanket provision of State statute, as outlined in the above example.**

- **The order must be put into effect at any time before the mandated 1-month overdue support accrues if the obligor requests it, otherwise the order is executed when the required arrearage has accrued, or immediately if the State so chooses.**

- The obligor is to be notified of the impending income withholding and is to be provided the right to request a hearing on matters of fact. The obligor must also receive specification as to the procedures to follow if he wishes to contest the withholding.

  The advance notice to the obligor is not required for those States which have a withholding system in effect on August 16, 1984, if that system provides any other procedures as may be necessary to meet due process requirements of State law.

- If the obligor pays the overdue support which triggered the withholding, it cannot be the sole basis for stopping the withholding action.

- The order is directed to and binding on the employer. If the employer fails to honor the order, the employer will be held liable for any amounts up to the accumulated amount it failed to withhold.

- The child support withholding takes priority over any other attachments, executions, or garnishments.

- The employer may deduct a fee for each payment transmitted, if the State statute so provides.

- A fine must be levied against an employer who discharges, refuses to employ, or takes disciplinary action against an employee because income withholding has been entered against that employee/obligor's income.

- The order is transferable to future employers; the obligor's former employer must notify the withholding agency of termination of employment. The employer must also notify the withholding agency of the obligor's current home address and the name and address of the obligor's new employer, if known.

- The State must simplify the withholding process for employers, e.g., one check for multiple withholdings.

- The State must extend the withholding process to provide for the withholding from income within the State in cases where the applicable support orders were issued in other States.

- The State must establish provisions for the termination of withholding.

Chapter III

ESSENTIAL REQUIREMENTS FOR IMPLEMENTATION

Planning the Implementation

Early planning should focus on organizing and staffing the implementation effort. The first step of this process is to appoint a planning committee which will plan all facets of the implementation including:

- Researching the public notice and administrative rulemaking requirements for the State. Public hearing and comment periods can sometimes last as long as 6 months and must be taken into account in any timetables for implementation.

- Considering the impact on resources that will result from implementing and using new procedures. The committee should examine both internal impact on resources such as staffing levels, staff time and budget constraints, and the impact on external resources, such as potential outside withholding agencies and employers.

- Determining the best (most efficient and least costly) way for IV-D to administer the income withholding process. The purpose of such a study is to provide management with information upon which to decide whether to administer the withholding in-house or contract it out. Factors which must be considered include: a) possible negotiation of a service contract; b) realignment of locate and enforcement efforts; and c) transfer of responsibilities and identification of personnel accountability.

- The planning committee would also develop an implementation design plan for use as a guideline in establishing time frames and target dates to implement the income withholding process. This plan should provide a general outline for implementation and ongoing operation of the income withholding process allowing for revisions as activity progresses.

- Additionally, the committee should consider the development of an automated interface with the State's Employment Security Agency (SESA) and major employers. Since IV-D and SESA already exchange information for locate purposes and unemployment intercept, it is reasonable to suggest that States expand this system to ensure immediate identification and verification of employment. This expansion would eliminate unnecessary delays in implementing an income withholding action due to insufficient employer information.

- An electronic funds transfer (EFT system) of child support payments will enhance case tracking and accounting, thus increasing timeliness and the number of collections which can be processed as well as facilitate processing for those employers opting to use it.

Furthermore, management must take into account the impact of change on their subordinates. Frequently, subordinates initially show resistance to management's efforts to change procedures. The reasons for this resistance can be:

- Fear of obsolescence
- Fear of the unknown
- Fear of loss of competence

- Threat of the need to learn new skills and/or techniques
- Fear of loss of relationships
- Fear of loss of power

Any of these perceived fears can result in a lack of motivation and commitment which will delay and disrupt the implementation.

Managers can influence how easily subordinates accept change in the workplace by:

- Encouraging subordinates to view the change as an opportunity, not a threat
- Having a positive attitude toward the change. The manager, either intentionally or unintentionally, may set the tone of the office towards the change.

The manager can further convey his support for his subordinates' concerns by providing timely resolution to any issues that are raised.

Procedures Development

The State withholding agency should develop procedures for incorporating and using income withholding in all new and modified child support orders in IV-D cases and for applying income withholding to the existing IV-D caseload.

Including an income withholding order in every new order for child support can be procedurally accomplished by including a paragraph in the child support order notifying the obligor that the order against him may be enforced by income withholding.

Procedural Steps

Procedural steps to take and how to use income withholding in a new child support order once the obligor amasses the State-specified delinquency, follow:

a. Verify obligor's arrearage amount—an overdue amount equal to 1-month's overdue support is required to trigger the withholding, less if the State chooses.

b. Verify employment status and employer location.

c. Provide advance notice to the delinquent obligor.

d. Monitor timeliness of obligor's response.

e. Take action as required based on obligor's response within the mandated 45-day timeframe.

f. Send income withholding notice to employer.

g. Monitor employer compliance.

The following explores each step in more detail:

a. Verify amount of obligor's arrearage. Public Law 98-378 requires that when an amount equal to 1-month's support payment (or less at the State's discretion) becomes overdue, income withholding must be applied.

   The withholding agency should make sure records of payment are complete and up-to-date. This reduces the chance of making an error.

   Management must recognize the need for an automated case tracking system to ensure immediate delinquency identification.

b. Verify employment status, employer location, payroll address, and payroll cycle.

   Because large employers frequently have several locations within one jurisdiction with the payroll office in yet another location, it is a good idea to verify exactly where—within the company—to send the income withholding order. In most instances, this information may be obtained by a telephone call. Some large employers produce employee telephone lists which can be used to determine the obligated parent's address for income withholding.

c. Provide obligor with advance notice of income withholding

Public Law 98-378 requires that each State statute have a provision stating that the obligor must receive advance notice of an impending income withholding order and have an opportunity to contest the action if he/she wishes to do so. This notice must inform the absent parent of the following:

(1) The amount of overdue support that is owed and the amount of wages that will be withheld.
(2) That the provision for withholding applies to any current or subsequent employer or period of employment.
(3) That procedures are available for contesting the withholding, what those procedures are, and that the only basis for contesting the withholding is a mistake of fact.
(4) The period within which the absent parent must contact the State in order to contest the withholding, and that failure to contact the State within the specified time limit will result in the State notifying the employer to begin withholding;
(5) The actions the State will take if the individual contests the withholding.

Other information may be provided in the advance notice, such as the definition of "mistakes of fact".

It is important to note, however, that this advance notice requirement does not apply to States which had a system of withholding for child support as of August 16, 1984, which meets State due process requirements.

Each State's withholding statute should specify the type of service e.g., certified, substitute or personal, that is required. Connecticut, for example, uses certified mail. If service is unsuccessful at the obligor's address, the withholding agency will need to try to serve it at the employer's address. If service is still unsuccessful, income withholding action must halt until service is successful.

Some State statutes may require that an employer make an obligor available for service.

d. Monitor timeliness of obligor's response.

Based upon State guidelines, the obligor will have a specified number of days to respond to the notice of intent by contesting it, otherwise income withholding action will continue. The withholding agency must design and implement a system to keep track of the dates notices are sent and the subsequent "due dates" for the obligor's response.

e. Action based on obligor's response.

Within 45 days of the date the advance notice is issued, the State must provide an absent parent who contests an income withholding order "an opportunity to present his or her case to the State", and based on that hearing, determine if the withholding will occur and, if so, provide notice to the employer.

For States in which the administering agency is the court system, the hearing will most likely be the type of hearing normally provided to a judgment debtor who contests execution on the judgment, the scope of which will be limited to mistakes of fact. For States in which an executive agency administers the procedure, an administrative hearing will be given. Public Law 98-378 does not require a formal hearing. Indeed, given the limited scope of the hearing, many States may opt for a less formal hearing.

During this hearing, the obligor may prove that mistakes of fact have occurred. This is the only basis upon which withholding action may be halted. Mistakes of fact, as defined in the Federal Regulations (45 CFR 303.100(a)(5)), may be errors in the amount of current or overdue support, or in the identity of the alleged absent parent.

If the obligor does contest the withholding, the State must determine whether such withholding will occur no more than 45 days after the provision of the advance notice. This decision is to be provided the obligor along with the timeframe within which withholding is to begin.

If the obligor does not respond at all to the advance notice, the withholding agency should continue to implement income withholding.

f. Send notice of income withholding action to employer.

If the State implementing the provisions of Public Law 98-378 is one that is exempt from providing the obligor with advance notice of the

withholding, that State must send notice to the employer on the date the obligor has amassed the equivalent of 1 month overdue support. Otherwise, notice must be sent either on the date the absent parent is informed of the result of any contest or at the end of the period within which the absent parent must notify the State to contest withholding if he or she does not do so.

State statute may prescribe a certain form and, at the least, is likely to prescribe minimal elements to be included. A prepared form would be the easiest for the withholding agency to issue.

Information to be included in the notice as required by Federal Regulations (45 CFR 303.100(d)(1)) is as follows:

- The amount to be withheld from the absent parent's wages, and a statement that the amount actually withheld for support and other purposes including the employer's fee may not be in excess of the maximum amounts permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673 (b));

- The employer must send the amount to the State within 10 days of the date the obligor is paid, unless the State directs that payment be made to another individual or entity;

- In addition to the amount withheld for support, the employer may deduct a fee established by the State for administrative costs

incurred for each withholding, if the State permits a fee to be deducted;

- The withholding is binding upon the employer until further notice by the State;

- The employer is subject to a fine to be determined under State law for discharging an absent parent from employment, refusing to employ, or taking disciplinary action against any absent parent because of the withholding;

- If the employer fails to withhold wages in accordance with the provisions of the notice, the employer is liable for the accumulated amount the employer should have withheld from the absent parent's wages;

- The withholding shall have priority over any other legal process under State law against the same wages;

- The employer may combine withheld amounts from absent parents' wages in a single monthly payment to each appropriate agency requesting withholding, separately identifying the portion of the single payment which is attributable to each individual absent parent;

- The employer must implement withholding no later that the first pay period that occurs 14 days following the date the notice was mailed; and

- The employer must notify the State promptly when the absent parent terminates employment and must provide the absent parent's last known address and the name and address of the new employer, if known.

NOTE: Public Law 98-378 provides that the notice given to the employer shall contain only such information as may be necessary for the employer to comply with the withholding order.

States should develop a "Payment Transmittal Form" for employers to use to accompany payments sent to the withholding agency. This form would provide the necessary identifying information, i.e., the name, social security or child support case number, how often the deduction is made (weekly, biweekly, or monthly), and the amount of the payment. If the form were designed in columnar form, one line could contain information for one obligor/employee and many deductions could be identified on just one form — one line per obligor.

Service to Federal - Civilian and Military

Clear Congressional intent indicates that Federal employees, both civilian and military, are subject to wage withholding, and the Office of Personnel Management has issued directions to all Federal entities calling for swift compliance with State withholding notices and instructing agencies to follow the garnishment regulations at 5 CFR Part 581.

Under the Social Security Act Sections 459 and 462, for "Consent by the United States to Garnishment and Similar Proceedings for Enforcement of Child Support and Alimony Obligations", military and other Federal government entities must designate an agent or agents to receive service of process. These agents are listed in appendix A of 45 CFR 581. If an agent has not been designated, or the withholding agency cannot determine who that individual is, service of process can be directed to the head of the agency involved.

Service of Process on Federal Agencies

Special procedures may be required to withhold income from Federal employees. The regulations at 5 CFR 581 Subpart B for Federal employees establish standards for service of process on Federal agencies for garnishment in child support actions. These regulations may require additional information or steps not required by State law. Some agencies, particularly the military, insist on scrupulous observance of every detail. This can seriously delay the implementation of an income withholding order as service of process is returned to the withholding agency, and must be reissued with correction of the errors.

Some pitfalls which IV-D agencies have encountered in the past include the following:

o Failure to send process by proper means. 5 CFR 581.202(b) requires either personal service, or certified or registered mail,

return receipt requested. The process may well not be accepted if these standards are not met.

- o Failure to identify the agency as employer/garnishee in the legal process. Some States provide for an notice addressed simply to obligor's employer or subsequent employer without specification by name. At least some agencies interpret this is to be insufficient under 5 CFR 581.202(a).

The problems associated with establishing income withholding on Federal employees are not insurmountable. Extra time and effort may be required, but scrupulous compliance with regulations should result in success.

g. Monitoring Employer Compliance

The withholding agency must design a system to monitor employer compliance with the withholding order. This may be a subsystem of an existing delinquency monitoring system.

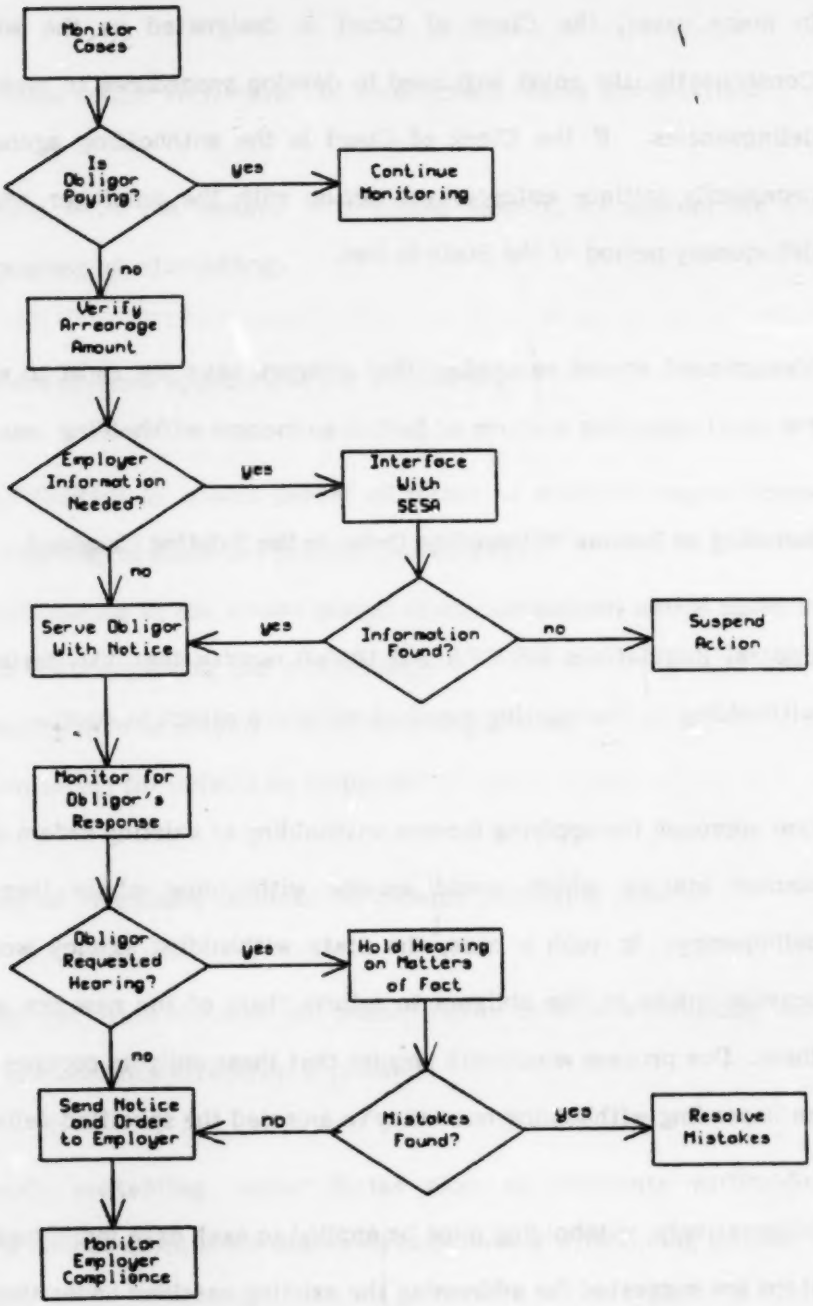
Should the employer not honor the order, the withholding agency can take several steps:

- o Verify that the obligor is still employed by that employer.

- o Verify that the employer, i.e., proper payroll office, did receive the order.

Public Law 98-378 requires that the employer be held liable for any amount it failed to withhold. Further, the State may choose to initiate contempt proceedings against the employer if the order is not honored.

Effecting an Income Withholding Order



Court Procedures

In many cases, the Clerk of Court is designated as the withholding agency. Consequently, the court will need to develop procedures to monitor payments and delinquencies. If the Clerk of Court is the withholding agency, the Clerk will necessarily initiate enforcement action with the employer when the triggering delinquency period of the State is met.

Management should remember that obligors have the right to appeal decisions to the court regarding matters of fact in an income withholding case.

Including an Income Withholding Order in the Existing Caseload

Federal Regulations (45 CFR 303.100(a)) require that the State apply income withholding to the existing caseload without a return to court.

One approach for applying income withholding to existing orders is the passage of a blanket statute which would provide withholding where there is a triggering delinquency. In such a case, the State withholding agency would be advised to provide notice to the obligors to inform them of the new law and how it affects them. Due process would still require that these obligors receive advance notice of an impending withholding once they've amassed the specified delinquency.

Alternatively, withholding must be applied to each case individually. The following steps are suggested for addressing the existing caseload under this approach:

- Identification of appropriate orders—those cases with a delinquency equivalent to 1 month's support payment or more.

- Determination and/or verification of employment status and location.

- Coordination with the income withholding agency, as appropriate for filing or processing withholding.

- Enforcement of cases appropriate for withholding:

  - Notification to absent parent of intent to withhold wages/income (according to State due process procedures);
  - Notification to the absent parent of any subsequent action taken by the State regarding the withholding;
  - Notification to employer of withholding action;
  - Monitoring for default by employer

- Monitoring of remaining caseload for default in existing orders.

- Use of current State statutes and procedures to enforce withholding until the new law becomes effective, if possible.

- Immediately contacting other States when an interstate withholding request is needed since some States already have a withholding process in place.

NOTE: A listing of States with interstate provisions that comply with P.L. 98-378 is available from the National Child Support Enforcement Reference Center. See back of book for the address.

Interstate Withholding

Federal Regulations (45 CFR 303.100(g)) require that each State extend its income withholding system to allow withholding from income derived within the State in order to enforce support orders from sister States.

A State requesting income withholding action from a sister State must compile and transmit all documentation required by the responding State. At a minimum the following should be included:

(1) A copy of the support order with all modifications.

(2) A copy of an income withholding notice, if any, still in effect.

(3) A copy of the portion of the income withholding statute of the issuing State which sets forth the requirements for obtaining income withholding under the law of that State.

(4) A sworn statement of the obligee (or certified statement of the agency) of the arrearages and the assignment of support rights, if any.

(5) A statement of:

(a) The name, address, and social security number of the obligor, if known.

(b) The name and address of the obligor's employer or of any other source of income of the obligor derived in the State in which withholding is sought.

(c) The name and address of the agency or person to whom support payments collected by income withholding shall be transmitted.

The responding State, where the absent parent is employed, upon receiving a support order from another State, must:

(1) Provide notice to the obligor in accordance with the requirement for sending notice in intrastate cases.

(2) Provide the absent parent with an opportunity to contest the withholding in accordance with procedures established for intrastate cases.

(3) Provide notice to the employer in accordance with the requirements established for intrastate cases.

(4) Notify the State in which the custodial parent applied for services when the absent parent terminates employment within the State, and provide the name and address of the absent parent and new employer, if known.

NOTE: Should the information provided by a State agency requesting income withholding be faulty or incomplete, those issues should be resolved, if possible, by the State receiving the request without returning it to the requesting State. Doing so will avoid unnecessary delays and promote expeditious handling of income withholding cases.

Training

State/county child support personnel who write the procedures are often also assigned responsibility for training those individuals involved in the use of new procedures. Some persons requiring training may be court personnel, administrative hearing officers, attorneys, and IV-D line staff.

Training should occur before operation of the technique actually begins.

Copies of the new statute, regulations, policy statements, guidelines, forms and written procedures, and "actual case" exercises enhance the training experience.

Public Relations

The State IV-D agency or the State withholding agency should inform employers of the new income withholding--what it is and why the State is using it. Employers should also be informed as to their responsibilities and liabilities under the law. Having accepted the concept, the employer is more likely to comply with an order when it's served. Public information/education is especially important in jurisdictions where there are large employers.

Suggested public relations activities may be:

- Eliciting the Governor's support. Arranging a press conference in which the Governor states his support for mandatory income withholding may be very effective.

Providing large individual employers, and business and industry associations, with a presentation on why income withholding is a valuable mechanism. Such a presentation would also provide employers with an opportunity to have their questions answered.

Developing and providing a brochure to employers explaining the purpose of the law, highlights of its provisions, and other facts of interest to an employer. Illinois has designed such a brochure. Texas developed a question and answer pamphlet on income withholding for employers. Minnesota has also designed such a brochure.

Guidelines, Procedural Manuals and Forms

The State withholding agency should develop procedural guidelines to incorporate into manuals. The basis for the guidelines will be Public Law 98-378 and Federal regulations implementing that law.

The State's procedures manual should contain the newly developed procedures and forms regarding the application and use of mandatory income withholding for IV-D cases with existing child support orders, new IV-D cases as an obligation is established, and those IV-D cases that are modified.

Agencies must consider the time required for lengthy approvals and clearances regarding the design and use of new forms. Since the new forms must be reviewed for legal sufficiency, the legal arm of the department or agency must be involved

at the beginning of the form development process. Such involvement will facilitate the legal approval process.

Good Case Management Practices

Management should keep in mind good case processing and management practices while implementing mandatory income withholding. At a minimum, four areas of case management should be considered:

1. Work simplification;
2. Information exchange/compatability between components;
3. Quality and Quantitative Control Systems; and
4. Case file management.

Each of these topic areas is discussed briefly below.

Work Simplification

Work simplification consists of eliminating unnecessary work and streamlining the remaining work. The objectives of work simplification are to reduce processing time from start to finish for completing each operation for income withholding and to reduce unnecessary duplication.

One approach to identifying potential areas for work simplification is flowcharting. Flowcharting permits management to see the whole picture of a particular operation. Flowcharting will show:

- How each case procedure is set up;
- Who performs each task;
- The physical movement of the documents; and
- What resources are used.

The flowchart will also help identify:

- Duplication of effort;
- Unnecessary steps;
- Excessive supervisory review;
- Excessive movement of paper; and
- Bottlenecks and delays.

Once problems are identified, simplier alternative methods can be developed.

Information Exchange Compatibility Between Components

A second area for management's consideration in implementing manadatory income withholding is the compatability of information exchange between IV-D and the withholding agency. In order to coordinate efficient information exchange, the following factors should be considered:

- Duplicate files may be unnecessary and cumbersome.
- Case identifiers (case file numbers or names) should be identical between IV-D and the withholding agency. If this is not possible, then a cross referencing system should be developed.

- o Forms and documents common in the IV-D agency should be used by the withholding agency, if possible.

Useful Elements of a Case Management System

The following 2 control systems should be a part of management's income withholding case management practices:

1. Quality Control Systems

   This system should be established to capture information on case processing to measure its quality and give feedback to management. Such feedback is required to enable management to take appropriate corrective action when a problem exists and to keep income withholding on the desired course.

2. Quantitative Control System

   A quantitative control system is designed to provide mangement with information for proper decision making to achieve efficient and effective case processing for income withholding. Examples of basic decisions that have to be made for case processing control are:

   - o Whether staff performance meets expectations;
   - o Whether resources are being utilized properly; and
   - o Whether operational goals and objectives are being met.

Case Files Management

Case files should be designed to meet the case processing needs of the office. To evaluate present filing systems, keep in mind the main goals of any filing system which are:

- To make records available and retrievable when they are needed.
- To keep all related materials together so that the case history will be available and accessible in one place and
- To provide a permanent and safe place for storing records when they are not in use.

Examples of filing control systems follow:

- Outcard System

  In this case, an "outcard" is inserted in place of the removed casefile. Pertinent control information (for example, requestor's name and phone number, case file number, date removed from the file) is recorded on the outcard.

- Card File System

  When a case record is requested, a file card is annotated with the proper information and placed in the card file.

- Tickler System

  In a manually controlled tickler system, information for action is noted on the card and filed behind the proper time tab in chronological order. The file is then reviewed routinely and proper employees are notified of the action needed.

[1]Kastner, Carolyn and Young, Lawrence. In the Best Interest of the Child, A Guide to State Child Support and Paternity Laws, October, 1981

Chapter IV

PROBLEMS TO ANTICIPATE

In actual use of the mandatory income withholding technique, regardless of how careful and thorough the implementation has been, occasional problems will nonetheless occur. The following are some of the problems States have faced with suggested remedies.

Management Related Problems

Problem 1.

Slippage in implementation schedule due to staff having other responsibilities, overload of tasks, or general resistance to new procedures.

Solution

Management can minimize delays by asserting the importance given the project and dedicating specific blocks of staff time to the effort in exclusion of other duties. Some jurisdictions have hired income withholding clerks whose only duty is to service this aspect of the program.

Problem 2.

The employer does not provide sufficient identification information for a transmitted payment.

Solution

Large employers will usually make a single payment for a number of obligors. The withholding agency must be able to credit each separate account. If the employer does not provide sufficient identifying information, the accounting process can become overly complicated. The withholding agency should work with employers

to develop an easy method to provide the necessary information in a manner most usable by the withholding agency.

Sometimes a phone call to the payroll office may be sufficient to identify the correct account and/or amount. The withholding agency should provide instructions to the employer regarding the adequate identification of any future transmittals of payments.

As was previously discussed, the withholding agency should design an employer payment transmittal form for the employer's use in sending payments to the withholding agency. See Procedural Steps in Chaper III.

Unidentified money from employers should not be held by the withholding agency but should be placed in a separate account until it can be identified and credited to the proper account.

Problem 3.

Late transmittal of modification/terminations to employer.

Solution

Federal regulation (45 CFR 303.100(a)(10)) requires that procedures be in place for returning improperly withheld amounts.

Obligor Related Problems

Problem 1.

When notified that withholding will be executed, obligor complains that he will lose

his job or promotion, or that he won't be hired.

Solution

Obligor should be told of statutory protections.

Further, the obligor should be informed of the benefits of the withholding process to him, such as: withholding ensures that payment is made; he is relieved of the burden of making the payment; and, withholding provides a record of payment.

Problem 2.

More than one withholding order is against the same obligor

Solution

Each order is treated separately. Amounts available for withholding must be allocated by the State. Limits imposed by Section 303(b) of the Consumer Credit Protection Act apply to multiple withholdings as well as single withholdings. Withheld amounts must first be applied to current support. Amounts remaining should then be applied to overdue support.

Problem 3.

Obligor changes jobs without notice

Solution

When the withholding agency learns that the obligor has changed jobs, it should contact the previous employer for information regarding the obligor's new employment. Federal Regulations (45 CFR 303.100(d)(1)(x)) require that the employer immediately notify the withholding agency when an obligor/employee terminates employment. If the previous employer has no information, interface with SESA may provide new employer information.

Problem 4.

Obligor works out-of-State

Solution

The State withholding agency may be able to avoid using interstate procedures if the employer does business in the State in which the withholding agency is located. For example, if the obligor works for a corporation out of State, and that corporation has a subsidiary located in the same State as the withholding agency, the withholding agency can serve the subsidiary with the notice to withhold income. Otherwise, interstate procedures would apply.

Employer Related Problems

Problem 1.

Incorrect employer department or unit served with notice for income withholding.

Solution

The withholding agency should contact the employer to determine where to serve the income withholding notice.

To avoid future problems, the withholding agency should compile a comprehensive listing of employers in the State. The list would detail the specific service of process points for the withholding agency to utilize in sending withholding notices.

Problem 2.

Payments are not being received from an employer after the notice has been sent.

Solution

Determine if the employer did indeed receive the notice. If the employer did receive the notice, determine if there is a good reason why the order is not being honored. An acceptable reason might be, for example, that the company is shut down or the employee did not work the whole time period and the employer is in doubt as to what sum to deduct and send. On the other hand, the employer could be simply refusing to honor the order, in which case action would be taken as described below.

Problem 3.

Employer is refusing to transmit payments.

Solution

Several steps can be taken in this case.

- o A telephone call should be made to the employer to determine why payments have not been transmitted.
- o A warning letter may be issued to the employer stating that legal action will be initiated if the order is not obeyed.

Public Law 98-378 requires that the employer must be held liable for any amount he fails to withhold.

Problem 4.

Employer fires or disciplines employee.

Solution

Fine the employer. Public Law 98-378 requires that the employer is subject to fine for discharging, or otherwise disciplining an employee.

Problem 5.

Employer refuses to hire potential employee with income withholding order.

Solution

Check the State labor code to see what provisions apply to this situation. Also, union officials may be able to help the employee.

Problem 6.

The employer notifies the State withholding agency that it cannot honor the income withholding order because the required resources (staff, computer capabilities, etc.) are not available.

Solution

Employer may need an orientation to the process. With a little instruction, the employer may realize that it is not a complicated, time-consuming procedure.

Fees can be used to offset the cost of the process.

The State withholding agency should prepare a brochure explaining the provisions of the income withholding law and its benefits to the employer. This brochure should be sent with each income withholding order.

Problem 7.

Service of notice to employer is unsuccessful.

Solution

First, find the reason why it was unsuccessful. Was it sent to the wrong address? Was it sent to the wrong person?

If the above questions do not provide answers to the problem, the agency can next try to use personal service, i.e., leave a copy of the notice at the obligor's residence with some responsible person or by delivering a copy to an agent authorized to receive such..

Problem 8.

Termination of income withholding order cannot reach the employer immediately.

Solution

A telephone call is the quickest way to alert the employer of a termination. The withholding agency should then follow up the telephone call with process consistent with State statute.

Chapter V.

ASSESSMENT OF MANDATORY INCOME WITHHOLDING IMPLEMENTATION

Assessment or evaluation is an important aspect of the management process, and should be considered early in the implementation planning process.

Completion of the assessment process and analysis of its results will provide objective data on the success of the mandatory income withholding implementation and reveal any adjustments that need to be made in the newly implemented technique. The State should consider the assessment process an integral part of the implementation process and not an optional addition.

Reasons for Assessment

1. To determine need for additional clarifying legislation.

2. To ascertain if the mandatory income withholding process is in place and functioning.

3. To ensure that the process continues to function.

4. To evaluate the impact, value and cost effectiveness of the technique.

5. To gather management information such as:

- o Costs
  - What were the costs of implementing this new technique?
  - What are the ongoing costs?
  - Cost breakout (any new staff, postage or service costs, etc?)
- o Results
  - Was service successful?
  - Collections as a result of mandatory income withholding.
  - Increased percentage of caseload in compliance.
  - Impact on staff time, morale, etc.
- o Problems
  - What and where are the problems with the process?
  - Legal challenges.
  - Complaints from employers, payors, etc.

The Assessment Process

1. Planning the Assessment

Certain basic questions must be answered:

- o Who--what person or team -- will perform the assessment?

- o When--at what point after the technique is in place — will assessment be made? Assessment should be an ongoing process.

- o How--what evaluation techniques will be used; what information must be gathered and from what sources; and what resources are needed to perform the evaluation?

- o Results--who will receive the results and what use will be made of the results? (Will the results also be used to evaluate IV-D employee performance?)

Ideally, this assessment is a by-product of the monitoring function.

2. Assessment of Mandatory Income Withholding Data

The group performing the assessment can gather data in two principal fashions--through statistics and reports, and through the personal observation of those performing the evaluation and/or of those involved in performing and/or supervising the actual implementation tasks. Better still, a combination of the two may be used.

a. Good management as well as evaluation requires that certain statistics be gathered. Many of these statistics may already be available in existing reports or other documents. During the planning and implementation of the mandatory income withholding technique, formal or informal reports must be designed so that workers can keep track of useful information. Where possible, integrate the reporting of

mandatory income withholding data with other reports. Keep it as simple as possible and collect only necessary data. Some questions the group may want to ask are:

- o How much time does a worker spend performing the various steps associated with mandatory income withholding?

- o Which steps in the process tend to cause the problems? (Service, locate, etc.)

- o In how many cases has mandatory income withholding been successfully executed?

- o What collections were realized as a direct result of mandatory income withholding?

- o How many absent parents requested a conference? A court hearing? What were the results of these?

- o How many employers did not comply with the order? What actions were taken and with what results? Why?

b. Talking directly to the workers involved in executing mandatory income withholding can provide valuable additional information.

- o Are written procedures concerning mandatory income withholding adequate and clear for staff?

- o Do the forms meet the needs?

- o What is staff's perception of additional time saved or expended by using this technique?

- o What is the impact on staff morale?

- o Where do the problems still lie?

- o Are revisions to the statute needed?

3. Analyzing the Data

The information gathered as a result of the assessment process should satisfy the reasons for performing the assessment.

- o Have implementation tasks been successfully accomplished?

- o Have implementation objectives been met?

- o What has been the impact on IV-D collections and expenditures?

- o The rate of conversion of existing IV-D cases as well as the processing of new IV-D cases, as appropriate, through mandatory income withholding procedures should lead to possible decisions about the need to speed up this conversion.

- What has been the impact on staff time, morale, etc.?

- Further problems and necessary adjustments should be highlighted by the assessment process.

Summary

Initial assessment of the implementation of the mandatory income withholding technique should provide a wealth of information. And, anticipated positive impacts such as increased collections will help to strengthen the IV-D program at all levels.

Decisions need to be made about the advisability of and intervals for future assessments. In addition, feedback to all IV-D staff involved should complete the communications loop.

A Final Note

Additional information regarding income withholding is available from:

National Child Support Enforcement Reference Center

6110 Executive Boulevard

Beltway View Building, Room 820

Rockville, Maryland 20852

(301) 443-5106